

Collector of Central Excise Vs. Aerolex Hose Pvt. Limited

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-01-1989

Reported in : (1989)(39)ELT681TriDel

Appellant : Collector of Central Excise

Respondent : Aerolex Hose Pvt. Limited

Judgement :

1. Dealing with the miscellaneous application first the respondents company has prayed for substituting the respondents as stated in the impugned order namely from M/s. Aerolex Hose Industries to Aerolex Hose Pvt. Ltd. There being no opposition from the learned SDR misc.

application is allowed with consequent change in cause title.

2. Question involved in this appeal is the classification of the respondent company's product described as 'Hose assembly'. The product is composed of rubber or PVC Hose which is fitted with metal or aluminium fittings and sold as such. The Assistant Collector classified the product under T.1.4009.92 of the CET which reads as : "40.09 - Tubes, pipes and hoses of vulcanised rubber other than hardened rubber, with or without their fittings (for example, joints, elbows, flanges) 4009.92 - Designed to perform the function of conveying air, gas or liquid." The respondents company, on the other hand, claimed its assessment under CET 8431.00 or 8466.00 as parts of machinery. The impugned order passed by the Collector of Central Excise (Appeals), Madras, is in favour of the respondents

company herein. Hence this appeal by the department. Main ground for the appeal is that Hose assembly made of vulcanised rubber is nothing but 'Hose with fitting' which is squarely covered by the description under Heading 40.09. Hose, whether with or without fittings, both, are covered under the said Heading 40.09 and since they are designed to perform the function of conveying air, gas or liquid, depending upon the machine on which they are used, they would be rightly covered by the sub-heading 4009.92. Chapter Note 2(d) makes it further clear that this Chapter does not cover mechanical or electrical appliances or parts thereof of Section XVI of hardened rubber. Had the intention been to exclude parts of mechanical or electrical appliances falling under Section XVI of the CET, of vulcanised rubber it would have been so mentioned specifically in Note 2 of the Chapter as has been done in case of hardened rubber and of other goods. Since description under the Heading 40.09 read with sub-heading 4009.92 is more specific, this would prevail over other description in terms of the Interpretative Rule 3(a).

3. The respondent company, on the other hand, contends that CET Heading 40.09 is designed to cover, inter alia, hoses, whether with fittings or without fittings, which are of running length. Those which are cut to requisite sizes and subjected to further process such as cutting, skiving, fitment of fittings, swaging and testing would be covered by Chapter 84 pertaining to mechanical appliances and apparatus and the hose assemblies being parts of specified machineries they would be covered by the Headings 84.31 or 84.66. The respondent company's learned advocate further urges that in the absence of any definition of hoses given in the Tariff the way in which it is understood in the trade and industry has to be applied for the purpose of classification as is the settled legal position. He has further stated that in any case there is an ambiguity to the effect that whether the goods fall under Heading 40.09 on the one hand or 84.31 or 84.66 on the other hand. That being so aid to Interpretative Rule 3(c) should be invoked according to which the goods should be classified under the heading which occurs last in the numerical orders among those which equally merit consideration. Viewed in this light, the learned advocate urges that the proper classification of the goods would be under Heading 84.31 or 84.66.

4. We have carefully considered the pleas advanced on both sides. Hose assembly of vulcanised rubber, unhardened, manufactured by the respondent company is nothing but a hose pipe with fittings. It is no doubt true that hose pipes are cut to specific sizes and then, before the fittings are attached, they are required to undergo certain processes of cutting and skiving etc. as mentioned earlier, but their essential character still remains the same i.e. hose with fittings designed for the purpose of conveying air, gas or liquid. It may also be true that each hose assembly (hose with fittings) is designed specifically for each machine and even for different places in the same machine and these are not interchangeable from one machine to another or from one place to another in the same machine. This fact would not alter the character of the product under consideration. Even their own catalogue available on file under the Heading 'Aerolex Hoses & Fittings' describes them as hoses under the heading 'Applications'; full extracts of which are given below : " Aerolex hoses are used as original equipment in machine tools, earthmovers, heavy duty diesel engines and hydraulic lifts".

We find sufficient force in appellant-Collector's argument that had the intention been to exclude parts made of vulcanised rubber of mechanical and electrical appliances, it would have been specifically mentioned so in Chapter Note 2. The fact that only parts of hardened rubber of mechanical and electrical appliances have been excluded from the scope of Chapter 40 by virtue of Note 2 in that Chapter makes it dear as a necessary implication that parts of vulcanised rubber of mechanical and electrical appliances would be covered within the said Chapter 40.

As regards the arguments that hoses referred to in Heading 40.09 are generally of running lengths, is not correct as stated earlier on the basis of respondent company's own catalogue. Apart from this, the Explanatory Notes of Harmonised Commodity Description and Coding System under Heading 40.09 makes it further clear that "the heading also covers tubing of vulcanised rubber, whether or not cut to length, Another point urged by the respondent company that the term "hoses with or without fittings" appearing in sub-heading 4009.92 referred to such hoses which have inbuilt fittings is not supported by any reliable evidence. As referred to earlier, they are treating their own hose assemblies as hoses which are used with

original equipment in machine tools, earthmovers, heavy duty diesel engines and hydraulic lifts.

Explanatory Notes referred to above, provided a more authentic guidance of international usage regarding the scope of the term 'hoses with or without fittings' mentioned in Heading 40.09. This, as stated earlier, supports the department's case.

In view of the goods under classification being more specifically covered under Heading 40.09, Interpretative Rule 3(a) would be applicable in the circumstances. Aid to Interpretative Rule 3(c) can be invoked only when the earlier two Sub-rules 3(a) and 3(b) are not invokable.

5. Hence the appeal is allowed and the impugned order is set aside to the extent that the 'hose assembly' of vulcanised, unhardened rubber are classified under subheading 4009.92 of C.E.T.A. 1985.

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